

EXHIBIT 6

FILED UNDER SEAL

In the Matter Of:

In Re - Pork Antitrust Litigation

THOMAS LUSTGRAAF

June 09, 2022



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Court File No. 0:18-cv-01776-JRT-HB

IN RE:

PORK ANTITRUST LITIGATION

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30(b)(6) DEPOSITION OF

THOMAS LUSTGRAAF

ON BEHALF OF TRI-TEN LLC

JUNE 9, 2022

ORAL VIDEOTAPED DEPOSITION OF THOMAS LUSTGRAAF, via
Zoom, produced as a witness at the instance of the
Defendant Triumph Foods, LLC and duly sworn, was taken
in the above-styled and numbered cause on the 9th day of
June, 2022, from 9:16 a.m. to 12:21 p.m., before Melinda
Barre, Certified Shorthand Reporter in and for the State
of Texas, reported by computerized stenotype machine,
all parties appearing remotely via web videoconference,
pursuant to the rules of procedure and the provisions
stated on the record or attached hereto.

1 MR. FINLEY: Objection, calls for
2 speculation.

3 THE WITNESS: Do you want me to go ahead
4 and answer?

5 MR. FINLEY: Yes, please.

6 A. Yeah. I would say we probably would. There
7 has been times where he left and went to another
8 company, and we didn't go right away with him. We
9 stayed with the other company for a while.

10 But, you know it seems like there -- it
11 seems like a lot of times, you know, the longer you're
12 with somebody, they maybe start raising the prices and
13 raising the prices a little bit and you have to really
14 watch and feel like I have to really, you know, every
15 week be going over every invoice and do it. Then I
16 don't feel like I have a level of trust with them. So
17 that's probably why I've been with him the longest.

18 Q. (By Mr. Cook) So just to clarify, you're
19 saying that when you're with a company for a certain
20 amount of time, that they might raise the prices; but
21 you're saying that you would move kind of with this
22 sales representative to different companies. Am I
23 understanding that correctly?

24 A. Yeah. I would say that's a fair
25 characterization. We usually would stick with him, you

1 know. All things being equal, I would probably always
2 stick with him, you know.

3 Q. And have you ever shopped around in deciding
4 whether or not to continue using that sales
5 representative or switched to a distributor for which
6 he's not a representative?

7 A. Yes, we have. Sometimes on specific products,
8 especially if for whatever reason they just can't get us
9 a decent price on something, we've purchased just that
10 product from other suppliers.

11 There may be some stuff they just for
12 whatever reason can't seem to compete on; and we bought
13 that stuff other places, you know, even Sam's Club or
14 Restaurant Depot or things like that.

15 If you want an example, chicken wings. We
16 all know what happened to the price of chicken wings
17 over the last couple years. Well, there was a point
18 where he was at about 3.50 a pound and Restaurant Depot
19 had them for \$1.50 a pound. So obviously when the price
20 is that different, we had to buy somewhere else. He
21 obviously understands that, too.

22 Q. And do you recall any similar instances of his
23 company not being able to compete when it came to pork
24 prices, for instance?

25 A. I believe there's been a couple of times where

1 we've -- I know there's been a couple times where I
2 bought pork from Restaurant Depot lately, just in the
3 last, you know, since the -- basically since the
4 pandemic.

5 I don't specifically remember any times
6 before during the time period covered by this complaint.
7 You know, I don't have any specific memory of that. But
8 it's possible that could have happened because we do,
9 you know, monitor that stuff obviously to try to stay
10 profitable.

11 Q. And to that end have you ever negotiated with
12 your distributors on the price of pork?

13 A. No. You know, we only have the one location.
14 So we really don't have the buying power to negotiate
15 the prices.

16 Like I say, if we -- you know, I think
17 that's another reason with him because I think he gives
18 me the best prices he can, you know, obviously
19 contingent on what they're buying it for. So, you know,
20 we try to work him.

21 But if he says, you know, This is the best
22 I can do, I'm like, Well, that's -- I'm looking around
23 and I can get it cheaper here. Because I'm always --
24 you know, I'm in Sam's Club every week. I'm in
25 Restaurant Depot every week. And there's always other

1 sales reps coming in trying to get our business saying,
2 Oh, well, we can get you -- like hamburger is a big one.
3 We can get you hamburger for 20 cents less a pound,
4 which they will because it's a loss leader; and then
5 they get you on everything else. That's another reason
6 why we stay with him.

7 Q. Sure. And so just is it fair to say then that
8 you can't recall any instances of switching from your
9 distributor as far as purchasing pork during the
10 relevant time period? Is that correct?

11 A. Yeah. You know, it's been a while ago. So I
12 would almost think there would be, but I don't know. It
13 seems like it's something that just happens
14 occasionally.

15 So I don't remember specifically any of
16 those instances; but as a general rule, I would
17 guarantee it probably happened at some points during
18 that time period because it generally does happen on
19 occasion. They just -- for whatever reason they can't
20 get to the -- you know, somebody else has gotten a large
21 buy of something and they can do it cheaper.

22 Even occasionally the grocery stores, a
23 Hy-Vee or a -- I don't know what they do. They just get
24 a large buy or something, and they will have it cheaper.
25 So, you know, we'll go to them and substitute that

1 product out if we can.

2 Q. Sure. I just want to be clear on the answer to
3 the question. You said you guarantee that it's probably
4 happened, but you cannot identify an instance of that
5 occurring. Is that correct?

6 A. Correct.

7 Q. And has Tri-Ten ever purchased pork through a
8 buying group or a co-op or anything like that?

9 A. No.

10 Q. And does Tri-Ten typically purchase pork
11 produced or processed by the defendants in this case?

12 A. Yes. I know we've bought a lot of, you know --
13 several of the different defendants named, we've bought
14 product from them and still buy. Obviously they, you
15 know, are the pork suppliers. So we're still buying to
16 this day from many of them.

17 Q. So during the relevant time period did you buy
18 products produced by Hormel?

19 A. Yes, I believe so.

20 Q. And Smithfield Foods?

21 A. Yes. I should supplement. I know when we were
22 talking about pork products, I didn't include bacon. We
23 do go through a lot of bacon. That's another product we
24 buy.

25 Q. And so to sort of get back on track here, you